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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/723,258

11/25/2003

Steven D. Girouard

279.466US1

6079

21186

7590

10/09/2008

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EXAMINER

GETZOW, SCOTT M

ART UNIT

PAPER NUMBER

3762

MAIL DATE

DELIVERY MODE

10/09/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/723,258	Applicant(s) GIROUARD ET AL.	
	Examiner Scott M. Getzow	Art Unit 3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11, 13-34 and 37 is/are pending in the application.
4a) Of the above claim(s) 25-33 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11, 13-24 and 37 is/are allowed.
- 6) ☒ Claim(s) 1-10 and 34 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

Claim Rejections - 35 USC § 103

1. Claims 1-3, 6-10, 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chachques (2002/0124855) in view of Heynen et al (6,507,756).

Regarding the subject matter added to the claims, the 'predetermined amount' that the AV delay could be adjusted could be 'zero'. The phrase 'predetermined amount' is broad enough to encompass any adjustment, however slight, that the pacemaker would make under normal circumstances. Re claim 2, it is well known that modern day pacemakers can have a programmed VDD mode, if desired by the physician. The subject matter of claim 3 is considered to be intended use, not a structural limitation. As mentioned previously, the typical pacemaker can have a variety of modes, depending on the response that the physician wants from the patient, and the type of condition the patient is experiencing.

2. Claims 4,5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chachques (2002/0124855) in view of Heynen et al (6,507,756), and further in view of Bonnet (6,574,507).

See previous office action.

3. Claims 1-3, 6-10, 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chachques (2002/0124855) in view of Bornzin (6,832,112).

Bornzin teaches the ability to adjust the AV delay when needed, by a programmable amount over a predetermined period of time. To use such a feature with the device of

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Chachques would have been obvious since such would merely be a combination of known prior art elements yielding a predictable result.

4. Claims 4, 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chachques (2002/0124855) in view of Bornzin (6,832,112) and further in view of Bonnet (6,574,507).

See rejection supra.

Allowable Subject Matter

5. Claims 11, 13-24, 37 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott M. Getzow whose telephone number is (571) 272-4946. The examiner can normally be reached on M-F, 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Scott M. Getzow/
Primary Examiner, Art Unit 3762